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FILED DISTRICT COURT
Third Judicial District

OCT 14 1999

By 
SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH ex rel. the
DIVISION OF CONSUMER
PROTECTION,

Plaintiff,

vs.

IVAN WALKER, INC., a Utah
Corporation, d/b/a WALKER'S
FOOD AND FUEL, d/b/a WALKER OIL
COMPANY

Defendant

**FINAL JUDGMENT AND
CONSENT DECREE**

CASE NO. 990908005

JUDGE: Glenn K. Iwasaki

FINAL JUDGMENT BY CONSENT

Plaintiff, State of Utah, filed a complaint in this matter on August 9, 1999, involving the above-named defendant. The parties have entered into a Stipulation of even date herewith (the "Stipulation"), which has been filed in this action, pursuant to which they have agreed to the entry of this Final Judgment and Consent Decree (hereinafter sometimes referred to as the "Consent

Decree”) before the taking of any testimony and without trial or adjudication of any issue of fact or law, and without this Consent Decree constituting any admission by the defendant for any purpose other than the entry of this Consent Decree.

NOW THEREFORE, for the purpose of enforcing the law and the Stipulation between the parties, and upon consent of the parties, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an agency of the State of Utah, having its principal offices in Salt Lake County, Utah. Defendant is a Utah corporation doing business at various locations in the State of Utah, including the Heber station, marketing motor fuel products under the Phillips 66 brand and other brands.

2. This action is brought under the Utah Motor Fuel Marketing Act, Title 13, Chapter 16, Utah Code Annotated, as amended (the “Act), for injunctive relief, the imposition of civil penalties and the payment of plaintiff’s costs, reasonable attorney’s fees and reasonable investigative expenses incurred in this matter, all as provided in the Act.

3. This Court has jurisdiction of the subject matter of this action and of the defendant. Venue is proper in this Court because the plaintiff resides in Salt Lake County, Utah, having its principal offices in said County, because of the defendant’s consent, in the Stipulation, to the maintenance of this action and the entry of this Consent Decree in this Judicial District and because of defendant’s appearance by the filing of its Certificate of Service of Defendant’s Answers to Plaintiff’s First Set of Requests for Admissions.

4. At all times relevant to this proceeding, defendant has engaged in commerce in motor fuel

within the State of Utah. Defendant has acknowledged in the Stipulation that plaintiff's Complaint states a claim upon which relief may be granted against the defendant under the Act and that the Court may enter this Final Judgment and Consent Decree but defendant does not admit that it committed any violation of the Act or any other law.

II. DEFINITIONS

As used in this Consent Decree:

1. "Attorney General" means the Attorney General of Utah.
2. "Heber station" means the "Walker's" Phillips 66 retail station located at 800 South Main Street, Heber, Utah.
3. "Motor fuel" means any of the products defined as "motor fuel" in the Act, that is, gasoline, diesel fuel, gasohol, and all other fuels of a type designated for use as a motor fuel in self-propelled vehicles designated primarily for use on public streets, roads, and highways.
4. "Person" or "persons" means one or more individuals, corporations, partnerships, limited liability companies, or other entities.
5. "Retail station" means a station, store or other outlet from which motor fuel is offered or sold at retail.
6. "Sale" means "sale" as defined in the Act, that is, "any transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means, including any transfer of motor fuel by a person to himself or his affiliate."
7. "State" means the State of Utah.

III. INJUNCTION

Defendant, its officers, directors, employees, and agents are permanently enjoined from:

1. engaging in any acts, practices, or courses of conduct that would constitute violations of the Act, including, without limitation, engaging in or making any sale of motor fuel at any of defendant's retail stations located within the State at a price which is in violation of the Act;

2. violating any of the duties and obligations imposed upon defendant under the Stipulation and this Consent Decree.

IV. PAYMENT

1. Subject to the suspension provisions stated below, defendant shall pay to the State:

a. the sum of TWO THOUSAND DOLLARS (\$2,000.00) as a civil penalty, pursuant to Utah Code Ann. § 13-16-7 (1) (b);

b. the sum of EIGHTEEN HUNDRED THIRTY DOLLARS (\$1,830.00), representing the reasonable costs and expenses, including attorneys' fees and investigative expenses incurred by the State in this matter, pursuant to Utah Code Ann. § 13-16-7 (3) and (4).

2. These payments shall be made to the Attorney General, either by certified check or by wire transfer, within ten (10) business days after the defendant or its attorney(s), receive notice of the Court's entry of this Consent Decree; provided that, defendant's obligation to pay \$1,000.00 of the civil penalty imposed under Paragraph V.1.a, and the entire amount of the State's costs and expenses imposed under Paragraph V.1.b, shall be suspended for so long as defendant complies with the provisions of this Consent Decree and the Stipulation. In the event defendant fails to comply with any of the provisions of this Consent Decree and the Stipulation, this suspension shall have no further effect and the suspended amounts (\$1,000.00 of the civil penalty and \$1,830.00 of the States costs and expenses) shall become immediately due and payable by defendant to the Attorney General.

V. OTHER CONDITIONS AND REQUIREMENTS

For the purpose of determining or securing compliance with this Consent Decree and the Stipulation, the defendant shall:

1. inform each of its members, officers, employees, agents and representatives having responsibility for setting defendant's retail prices for the sale of motor fuel at any of defendant's retail stations within the State, about the content of the Consent Decree and Final Judgment and that noncompliance with the Consent Decree and Final Judgment may subject defendant to penalties for violation of the Consent Decree and Final Judgment;

2. provide to the office of the Attorney General from time to time upon written request made by the office of the Attorney General during the period commencing November 1, 2000, and continuing through November 1, 2003, within thirty (30) days of receiving such request, a declaration, signed by the President or any Vice President of the defendant, under oath, as to the fact and manner of compliance with the provisions of this Consent Decree and the Stipulation, which shall include, without limitation, the following: (i) certification that the defendant has complied with the terms and conditions of the Consent Decree and Final Judgment; (ii) certification that each of the persons identified in Subparagraph V.1, above, including any new person employed or working in the positions identified, has been informed about the Consent Decree, as stated in said Subparagraph;

3. permit representatives of the office of the Attorney General, upon written request and reasonable notice, subject to the right of the defendant to have counsel present, and subject to any legally recognized privilege, during normal business hours, to: (i) interview members, officers, partners, employees and agents of defendant relating to the subject matter of the Complaint, this

Consent Decree and the Stipulation, subject to their right to have counsel present; and (ii) inspect and copy all files, sales records, contracts, correspondence, memoranda, journals, minutes, agendas, calendars, books, accounts, advertising copy or other documents, or electronically-stored information, in the possession or under the control of the defendant relating to the subject matter of the Complaint, this Consent Decree and the Stipulation, including, without limitation, the records maintained by defendant pursuant to Utah Code Ann. § 13-16-10.

VI. PUBLIC RECORDS; CONFIDENTIAL INFORMATION

1. This Consent Decree, the Stipulation and the files of the Court in this matter are public records and will be available to any person for inspection and copying.

2. If any documents or other information contained in the annual report to be provided to the Attorney General or any other documents or other information obtained by the Attorney General pursuant to Section VI, contain confidential information, defendant may represent that portions of the information are confidential and shall identify, in writing, those portions of documents or other information for which a claim of confidentiality is being asserted. No such documents or other information for which a claim of confidentiality is asserted shall be disclosed by the State to any person other than a duly authorized employee or agent of the State, except for the purpose of securing compliance with this Consent Decree and the Stipulation, or as otherwise required by any court or by law. In the event the the Attorney General is under an obligation to disclose any confidential information the Office of the Attorney General, as appropriate, shall give ten days' notice (or if the Attorney General is under an obligation to disclose the information in less than ten days time, as much advance notice as possible) to the defendant prior to disclosing such information.

VII. MISCELLANEOUS; RETENTION OF JURISDICTION

1. This Consent Decree and its requirements are part of a settlement of a governmental action. The parties acknowledge that this is a disputed claim and defendant has consented to this settlement to avoid the expense and difficulties of trial. None of the requirements or conditions contained herein may be enforced by any other person nor can they be used as evidence in any action, private or public, for any purpose, by any person other than the parties to this Consent Decree.

2. If the Attorney General determines that the defendant is not in compliance with the requirements of this Consent Decree or becomes aware of other information that the Attorney General feels may evidence anticompetitive conduct, the Attorney General will give defendant at least fifteen (15) days advance notice before bringing an action for contempt or a civil injunctive action. Defendants will have the opportunity to present information to the Attorney General's office within that time period. Jurisdiction is retained by this Court for the purpose of enabling the Court, at any time, to make such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any provision of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violation thereof.

IX. NOTICES

Notices required or permitted to be given under this Consent Decree will be valid if sent by first class mail, postage prepaid, overnight mail or similar courier service, or facsimile transmission, addressed as follows:

If to the Attorney General:

Office of the Utah Attorney General

160 East 300 South
Box 140872
Salt Lake City, UT 84114-0872
Facsimile Number: 801-366-0315
Attention: Antitrust Unit

If to the defendant:

Ivan Walker, Inc.
456 East State Road
Pleasant Grove, Utah 84062
Attention: President

X. PUBLIC INTEREST

Entry of this Consent Decree is in the public interest.

Dated this 14th day of Oct., 1999.


Honorable Glenn K. Iwasaki
DISTRICT JUDGE